

DEPARTMENT OF EDUCATION**34 CFR Part 75**

RIN 1880-AA69

Direct Grant Programs**AGENCY:** Department of Education.**ACTION:** Final regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These amendments reduce the need for specific regulations governing individual programs. The amendments authorize the Secretary to establish selection criteria for a discretionary grant program based on statutory provisions that apply to a program and on existing selection criteria in EDGAR. The amendments also clarify the Secretary's authority to establish annual funding priorities for grant competitions.

EFFECTIVE DATE: These regulations take effect January 11, 1996. These regulations will affect only those competitions announced in the Federal Register after this effective date.

FOR FURTHER INFORMATION CONTACT: Ms. Jacinta Ma, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202-2241. Telephone: (202) 401-8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These amendments allow the Secretary to establish selection criteria based on certain statutory provisions, clarify the Secretary's authority to establish one or more annual priorities, and allow the Secretary to establish the maximum score for each selection criterion on a competition-by-competition basis. The amendments also conform existing regulations in §§ 75.1 and 75.200 to reflect the additional method for establishing selection criteria.

On September 1, 1995, the Secretary published a notice of proposed rulemaking (NPRM) for these amendments in the Federal Register (60 FR 46004).

Except for minor technical and editorial revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM two parties

submitted comments on the proposed regulations. An analysis of the comments follows.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: One commenter suggested that the Secretary add a selection criterion that would give additional consideration to small entities, such as small vocational rehabilitation agencies, because these entities have fewer resources than large entities for developing grant proposals, and thus are at a disadvantage in competing for awards.

Discussion: These amendments to EDGAR are not intended to change the substance of the EDGAR selection criteria. These amendments allow the Secretary to establish selection criteria based on statutory provisions and allow the Secretary to establish the maximum value of each criterion on a competition-by-competition basis. The Secretary expects to amend the EDGAR selection criteria in the future and will consider this comment in developing the new selection criteria.

Changes: None.

Comment: One commenter expressed opposition to the provision that would allow the Secretary to establish without public comment annual funding priorities that are specified in a program statute or selected from allowable activities specified in a program statute. The commenter believed that it would be important for the public to be able to comment on the establishment of annual priorities to alert the Secretary to important issues within States that might require changing a proposed priority.

Discussion: The Secretary believes that creating the option for the Department to establish certain annual funding priorities without public comment will allow the Department to award grants more quickly and at a time more convenient and useful to potential grantees. The Secretary believes that public comment on these types of priorities would be minimal. For those priorities specified in the authorizing statute, public comment would be limited to the way the Department implements the statutory priority, e.g., what weight to give to the priority or how to choose among priorities. Statutory priorities, moreover, are established through the legislative process, which provides for participation and comment from the public. In establishing priorities, the Department will continue to be guided by information generated during the

legislative process, the Department's experience in administering its programs, and feedback from customers, grantees and others. The Secretary has balanced the benefits to all grant recipients of a speedier and more efficient grant making process against the loss of the public's opportunity to provide formal comment in these limited circumstances and has determined that the benefits outweigh the disadvantages.

Changes: None.

Paperwork Reduction Act of 1995

These amendments have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

Some of the programs that would be affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Continuation funding, Education, Grant programs—education, Grants administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: December 5, 1995.

Richard W. Riley,
Secretary of Education.

The Secretary amends part 75 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

2. Section 75.1 is amended by revising the Note to read as follows:

§ 75.1 Programs to which part 75 applies.

* * * * *

Note: See part 76 for the general regulations that apply to programs that allocate funds among eligible States. For a description of the two kinds of direct grant programs see § 75.200. Paragraph (b) of that section describes discretionary grant programs. Paragraph (c) of that section describes formula grant programs. Also see §§ 75.201, 75.209, and 75.210 for the selection criteria for discretionary grant programs that do not have implementing regulations or whose implementing regulations do not include selection criteria.

§ 75.101 [Amended]

3. Section 75.101 is amended by removing paragraph (c).

4. Section 75.105 is amended by removing the word "or" following paragraph (b)(2)(ii), replacing the period at the end of paragraph (b)(2)(iii) with a semicolon, adding new paragraphs (b)(2)(iv) and (b)(2)(v), and revising the first sentence in paragraph (c)(2)(i) to read as follows:

§ 75.105 Annual priorities.

* * * * *

(b) * * *

(2) * * *

(iv) The program statute requires or authorizes the Secretary to establish specified priorities; or

(v) The annual priorities are chosen from allowable activities specified in the program statute.

(c) * * *

(2) * * *

(i) The Secretary may award some or all bonus points to an application depending on the extent to which the application meets the priority. * * *

5. Section 75.200 is amended by revising paragraph (b)(3) to read as follows:

§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

* * * * *

(b) * * *

(3) If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the Secretary uses one of the following to evaluate applications for new grants under the program:

(i) Selection criteria established under § 75.209.

(ii) Selection criteria in § 75.210.

(iii) A combination of selection criteria established under § 75.209 and selection criteria in § 75.210.

* * * * *

6. Section 75.201 is revised to read as follows:

§ 75.201 How to use the selection criteria.

(a) If points are assigned to the selection criteria, the Secretary informs applicants of—

(1) The total possible score for all of the criteria for a program; and

(2) The maximum possible score for each criterion.

(b) If no points are assigned to the selection criteria, the Secretary evaluates each criterion equally.

(Authority: 20 U.S.C. 1221e-3 and 3474)

7. A new § 75.209 is added to read as follows:

§ 75.209 Selection criteria based on statutory provisions.

(a) If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the Secretary may evaluate applications by—

(1) Establishing selection criteria based on statutory provisions that apply to the authorized program, which may include, but are not limited to—

(i) Specific statutory selection criteria;

(ii) Allowable activities;

(iii) Application content requirements; or

(iv) Other pre-award and post-award conditions; and

(2) Assigning the maximum possible score for each of the criteria established under paragraph (a)(1) of this section.

(b) The Secretary evaluates an application by determining how well

the project proposed by the applicant meets each statutory provision selected under paragraph (a)(1) of this section.

Example: If a program statute requires that each application address how the applicant will serve the needs of limited English proficient children, under § 75.209 the Secretary could establish a criterion and evaluate applications based on how well the applicant's proposed project meets that statutory provision. The Secretary might decide to award up to 10 points for this criterion. Applicants who have the best proposals to serve the needs of limited English proficient children would score highest under the criterion in this example. (Authority: 20 U.S.C. 1221e-3 and 3474)

8. Section 75.210 is amended by revising the heading, removing paragraphs (a) and (c), removing the point designations following the italicized headings in paragraphs (b) (1), (2), (3), (4), (5), (6), and (7), adding undesignated introductory text, removing "*The criteria—*" in paragraph (b), and redesignating paragraphs (b)(1), (b)(1) (i) and (ii), (b)(2), (b)(2)(i)–(iv), (b)(3), (b)(3)(i)–(vi), (b)(4), (b)(4)(i)(A)–(D), (b)(4)(ii) (A) and (B), (b)(5), (b)(5) (i) and (ii), (b)(6), (b)(6) (i) and (ii), and (b)(7) as paragraphs (a), (a) (1) and (2), (b), (b)(1)–(4), (c), (c)(1)–(6), (d), (d)(1)(i)–(iv), (d)(2) (i) and (ii), (e), (e) (1) and (2), (f), (f) (1) and (2), and (g), respectively, to read as follows:

§ 75.210 General selection criteria.

The Secretary may use one or more of the following selection criteria, together with one or more criteria established under § 75.209, if any, to evaluate applications for new grants under a discretionary grant program:

(a) *Meeting the purposes of the authorizing statute.* * * *

(b) *Extent of need for the project.* * * *

(c) *Plan of operation.* * * *

(d) *Quality of key personnel.* * * *

(e) *Budget and cost effectiveness.* * * *

(f) *Evaluation plan.* * * *

(g) *Adequacy of resources.* * * *

(Authority: 20 U.S.C. 1221e-3 and 3474)

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